

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.171 OF 2005

Shri.Prakash Shravan Patil ..Petitioner
Vs.
Shree Tyres & Anr. ..Respondents

...
Mr.Prashant D.Patil, Advocate for Petitioner
Mr.H.E.Palve for Respnodent no.1
Mr.Y.S.Shinde, A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI, J.
DATE : JULY 8, 2005

P.C.

1. Heard.

2. The petitioner is seeking quashing of order dated 5.1.2005 passed by the learned J.M.F.C. in S.C.C.No. 286 of 2000. The said case is under Section 138 of N.I.Act.

3. After the process was issued against the petitioner, the petitioner moved an application before the learned Magistrate for recalling of process. However, the learned Magistrate in view of the decision of the **Adalat Prasad Vs. Rooplal**

Jindal and Ors.[2004(4) Mh.L.J. 274], rejected the said application. Being aggrieved thereby, this application has been preferred. In view of the decision of the Supreme Court in the case of Adalat Prasad, no fault can be found with the order of the learned Magistrate rejecting the application for recalling of process.

3. For the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, in my view, it is clear that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within four weeks from today. In view of the statement, the trial Court

shall not proceed with the trial for a period of four weeks from today.

5. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties. The learned advocate for the respondent-complainant has fairly stated that no objection will be raised in respect of delay in filing the revision.

6. It is made clear that necessary revision will be preferred against the order of the Magistrate issuing process and not against the order of the Magistrate dated 5.1.2005 whereby the application of the petitioner for recall of process was rejected.

7. The petitioner is at liberty to withdraw the amount of Rs.35,000/- deposited by him before this Court.

8. Writ Petition is disposed of.

[V.K.TAHILRAMANI, J.]